

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RACHEL JOHNSON, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

YAHOO!, INC.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 14-cv-2028

U.S. District Judge Manish S. Shah

Magistrate Judge Jeffrey Cole

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Rachel Johnson files this Notice of Supplemental authority to bring to the Court's attention the recent decision by the United States Court of Appeals for the Ninth Circuit in *Marks v. Crunch San Diego, LLC*, No.14-56834, (9<sup>th</sup> Cir. September 20, 2018) (attached as Exhibit 1) relevant to Yahoo's pending Motion for Reconsideration (Doc. 318).

In *Marks*, the court held that "only the statutory definition of ATDS as set forth by Congress in 1991 remains" after *ACA International. Id.* at p. 17-18. Interpreting the statutory definition alone, the court held that the ATDS definition:

"is not limited to devices with the capacity to call numbers produced by a 'random or sequential number generator,' **but also includes devices with the capacity to dial stored numbers automatically.** Accordingly, we read § 227(a)(1) to provide that the term automatic telephone dialing system means equipment which has the capacity – **(1) to store numbers to be called or (2) to produce numbers to be called, using a random or sequential number generator – and to dial such numbers.**"

*Id.* at p. 23 (emphasis added).

Respectfully submitted,

By: /s/ Timothy J. Sostrin

Keith J. Keogh  
Timothy Sostrin  
Keogh Law, Ltd.  
55 W. Monroe St., Ste. 3390  
Chicago, IL 60603  
312.726.1092 (office)  
312.726.1093 (fax)  
TSostrin@KeoghLaw.com  
*Attorneys for Plaintiff Rachel Johnson and the Class*